IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

CRP.No. 2694 of 2000(G)

AGAINST THE ORDER DATED 30/05/2000 IN EP 563/1995 IN E.A.NO.208/1996 IN OS.661/1994 of PRINCIPAL MUNSIFF'S COURT, TRIVANDRUM

REVN. PETITIONERS: PETITIONERS: PLAINTIFFS: DECREE HOLDERS:

1. JANAKI PUSHPALAKSHI, AGED 66, D/O.LATE SMT.JANAKI, RESIDING AT NELLIVILA THEKKARUKUPURAM BUNGLOW, V.P.5/213, VENNIYOOR DESOM, OLD THIRUVALLOM, NOW VENGANOOR VILLAGE, THIRUVANANTHAPURAM.

2. SANKARAMMA PRABHAKARAN, AGED 50, S/O.LATE SANKARAN, K.S.E.B. EMPLOYEE, RESIDING AT -DO- -DO-

3. JANAKI ROSILY, S.R.VILASOM BUNGLOR, UREAKKODE VELLANAD, NEDUMANGAD.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS: DEFENDANTS: JUDGMENT DEBTORS:

1. N.STEPHEN, AGED 42, S/O.SRI.NESSAYYAN NADAR, BUSINESSMAN OF NELLIVILA THEKKARUKKU VEEDU, FALSELY ALLEGING TO RESIDE AT NEENA VIHAR, OLD THIRUVALLOM NOW VENGANOOR VILLAGE, THIRUVANANTHAPURAM.

2. E.THOMPSON, AGED 41, S/O.ENOSE NADAR, FARMER, RESIDING AT THEKKUMKARA, THADATHARIKATHU VEEDU, CHERIANKODE DESOM, POONJANKODE MURI, PEERUMKULAM VILLAGE, KATTAKKARA P.O., NEDUMANGAD.

3. S.VIDHYADHARAN, AGED 44, S/O.LATE SRI.SATHYANESAN NADAR, VENGANOOR PANCHAYAT PRESIDENT, NELLIVILA THADATHARIKATHU VEEDU, NOW RESIDING AT RAJ VILA, NELLIVILA P.O., VENNIYOOR DESOM, VENGANOOR VILLAGE, THIRUVANANTHAPURAM.

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 2694 OF 2000 G

Dated this the 27th day of November, 2007

O R D E R

The decree holders in O.S.No.661 of 1994, on the file of the Court of the Principal Munsiff of Thiruvananthapuram, have filed this Revision challenging the order dated 30.5.2000 in E,P.No.563 of 1995 and E.A.No.208 of 1996.

2. The suit was filed for an injunction restraining the defendants from trespassing upon the plaint B schedule and causing obstruction to the construction of compound wall in the plaint schedule properties. After trial, the trial court decreed the suit on 27.1.1995. The relevant portion of the decree reads thus:

> "The defendants are restrained by a permanent prohibitory injunction from trespassing into the plaint B schedule properties and causing any obstruction to the construction of the boundary wall to the plaint schedule properties."

During the pendency of the suit, temporary injunction restraining the defendants from trespassing into the property was in force.

3. The contention of the decree holders is that violating the temporary injunction order, at the fag end of the trial, the defendants cut and removed trees from the plaint schedule properties and also constructed a shed therein. The Execution Petition was filed making

these allegations and invoking the provisions of Order XXXIX Rule 3A and Order XXI Rule 32(1) of the Code of Civil Procedure.

4. The respondents/judgment debtors contended that the Execution Petition is not maintainable and that the decree holders are not entitled to put up a boundary without locating the decree schedule property with the aid of a surveyor. The respondents contended that the decree schedule property is not identifiable. The allegation of violation of the injunction was also denied.

5. A Commissioner was appointed, who filed Ext.C1 report. Before the court below, the second petitioner was examined as PW1. None of the judgment debtors was examined. The Secretary of the Panchayat was examined as DW1 to prove that licence was issued by the Panchayat to the respondents for construction of a house.

6. The court below dismissed the Execution Petition mainly on the ground that the plaint B schedule property is now in the possession of the first judgment debtor and the evidence of PW1 in cross examination would indicate that he has made conflicting allegations as to the point of time when the decree was violated. PW1 stated that the respondents violated the decree before the suit was decreed and he also stated in

evidence that the judgment debtors violated the decree after the decree. This evidence of PW1 was considered as detrimental to the maintainability of the Execution Petition. The court below also relied on Ext.X1 building permit produced by the second judgment debtor, which was proved by examining DW1. As per the building permit, on 8.2.1993 the Panchayat approved Ext.B2 building plan presented by the judgment debtors. The second judgment debtor is said to have paid the building tax on 17.2.1993 and 30.3.1996 respectively, as evidenced by Exts.B4 and B5. The decree holders had put forward a contention that the documents produced by the respondents are not genuine and those documents were procured at the instance of the third respondent, who was the erstwhile President of the Panchayat. The court below has not rendered any finding on this point. Another ground on which the court below declined the relief is that the decree schedule property was not identified with the help of a Commissioner. Though a Commissioner was appointed, the decree holders did not request for getting the help of the surveyor to assist the Commissioner. It was held that the decree could be executed only after properly identifying the property.

7. The main reason on which the court below passed the impugned order is that the plaint schedule property was not identified with reference to the survey records. It is not disputed that a decree was

passed by the trial court and that it is a valid decree. The respondents are bound by the decree. Whether they have violated the decree is a matter to be adjudicated. For the proper adjudication of the dispute, the court below thought that a proper identification of the property is necessary. It is true that the decree holder though took out a Commission, failed to seek assistance of the Taluk Surveyor to measure out the property with reference to the survey records. It is also stated that there is no proper plan before Court to enable the court to correctly identify the property and to adjudicate upon the disputes involved in the case. In the facts and circumstances of the case, I am of the view that an opportunity should be afforded to the revision petitioners/decree holders to apply before the court below to appoint a Commissioner and to afford the assistance of a surveyor for proper identification of the property. The Commissioner shall file a report touching upon all the relevant facts to enable the court to completely and effectively adjudicate upon the disputes involved in the case. Both the parties will be entitled to file work memo before the Commissioner. The court below shall direct the Commissioner to submit the report expeditiously. The court below shall also afford an opportunity to both the parties to adduce such other evidence as they wish to adduce. The court below shall dispose of the case in accordance with law after affording an opportunity of being heard to both parties. All the contentions of both the parties are left open.

The Civil Revision Petition is allowed and the order impugned is set aside. The trial court shall dispose of the matter in the manner indicated above.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 2694 OF 2000 G

O R D E R

27th November, 2007